NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 17 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

CALIFORNIA VALLEY MIWOK TRIBE, fka SHEEP RANCH OF ME-WUK INDIANS OF CALIFORNIA

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA, et al.

Defendants - Appellees.

No. 04-16676

D.C. No. CV-02-00912-FCD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted July 24 , 2006
San Francisco, California**

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN, Senior District Judge.***

The California Valley Miwok Tribe appeals the dismissal of its claims against the United States for breach of trust and violation of the Rancheria Act of 1958, as amended, arising out of the improper conveyance of tribal trust land to an individual Tribe member. We affirm.

We first reject the government's argument for summary affirmance. While the district court found no waiver of sovereign immunity on four theories, including the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), the court then proceeded to the merits of the statute of limitations issue. In doing so, it assumed correctly that sovereign immunity was waived under the APA, 5 U.S.C. § 702. The Tribe did not need to appeal this assumption because it was in its favor.

Next, although the Tribe correctly argues that the limitations period in 28 U.S.C. § 2401(a) is not strictly jurisdictional, *see Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 770 (9th Cir. 1997); *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 n.2 (9th Cir. 1995), we conclude that the district court nonetheless

*** The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

correctly analyzed the limitations issue and held based on the undisputed facts that the 1993 ALJ decision effectively put the Tribe on notice of its injury, adopting the reasoning of *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988). Under *Hopland*'s "knew or should have known" standard, Yakima Dixie was in a position to obtain knowledge of the Tribe's injury caused by the ALJ's 1993 decision, and the Tribe's claim thus accrued at that time.

Finally, this case presents no exception to the general rule that we will not consider arguments made for the first time on appeal. *See United States v. Monreal*, 301 F.3d 1127, 1131 (9th Cir. 2002). Thus, we do not reach the Tribe's equitable estoppel and tolling arguments.

AFFIRMED.